

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA
PITTSBURGH DIVISION**

GAYL WEINMANN, Individually
and for Others Similarly Situated

Plaintiff,

vs.

CONTRACT LAND STAFF, LLC

Defendant.

CASE NO. 2:22-CV-1140

Collective Action (29 U.S.C. § 216(b))

Class Action (Fed. R. Civ. P. 23)

**DEFENDANT CONTRACT LAND STAFF, LLC'S
REQUEST TO TAKE JUDICIAL NOTICE**

Pursuant to Rule 201 of the Federal Rules of Evidence, Defendant Contract Land Staff, LLC (“CLS”) hereby submits its Request to Take Judicial Notice in support of its Motion to Dismiss Plaintiff Gayl Weinmann’s (“Plaintiff”) collective and class action claims alleged in Plaintiff’s Original Collective & Class Action Complaint (Doc. 1).

In reviewing a Rule 12(b)(6) motion to dismiss under the Federal Rules of Civil Procedure, it is well-established that a court should “consider only the allegations in the complaint, exhibits attached to the complaint, matters of public record, and documents that form the basis of a claim.” *Lum v. Bank of Am.*, 361 F.3d 217, 221 n.3 (3d Cir. 2004). In the context of deciding a Rule 12(b)(6) motion that raises issue preclusion concerns, and where a plaintiff has not included the existence or substance of the prior adjudications in the body of, or attachments to, its complaint, it is axiomatic that a court must still consider the prior adjudication in order to determine whether issue preclusion bars that plaintiff’s claims. *Id.* Thus, courts have held that a prior judicial opinion constitutes a public record of which a court may take judicial notice. *Id.* Taking judicial notice of

matters of public record does not convert a motion to dismiss into a motion for summary judgment. *See Snatchko v. Peters Twp., No.*, 2:12-cv-1179, 2013 WL 1748342, at *4 (W.D. Pa. Apr. 23, 2013) (“The Court takes judicial notice of this public record and declines Defendants’ invitation to convert the Rule 12(b)(6) motion to dismiss into a Rule 56 motion for summary judgment.”).

Accordingly, in support of its Motion to Dismiss Plaintiff’s collective and class action claims, CLS requests that this Court take judicial notice under Rule 201 of the Federal Rules of Evidence of the following documents, which are public records from *Cosmo Clark, et al. v. Contract Land Staff, LLC*, Civil Action No. 4:20-cv-02620, filed in the United States District Court for the Southern District of Texas, Houston Division:

- A. COMPLAINT against Contract Land Staff, LLC (Docket No. 1);
- B. ANSWER to Complaint by Contract Land Staff, LLC (Docket No. 9);
- C. CONSENT to Join a Collective/Class Action for Frank E. Brown (Docket No. 15);
- D. MOTION to Certify Class by Cosmo Clark (Docket No. 17);
- E. RESPONSE in Opposition to MOTION to Certify Class (Docket No. 20);
- F. SUPPLEMENT to Response in Opposition to Motion (Docket No. 26);
- G. NOTICE of Filing Notice of Consent (Docket No. 30);
- H. ORDER REFERRING CASE to Magistrate Judge Frances H Stacy (Docket No. 31);
- I. MEMORANDUM AND RECOMMENDATION Denying Plaintiffs’ Motion for Conditional Certification (Docket No. 32);
- J. ORDER ADOPTING MEMORANDUM AND RECOMMENDATIONS re: MOTION to Certify Class (Docket No. 35);
- K. Joint MOTION for Settlement (Docket No. 38); and

L. ORDER granting Motion for Settlement (Docket No. 40).

Date: September 12, 2022

Respectfully submitted,

/s/ Adam T. Simons

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**ATTORNEYS FOR DEFENDANT
CONTRACT LAND STAFF, LLC**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has served on all counsel of record in accordance with the Federal Rules of Civil Procedure using the ECF system on this 12th day of September 2022.

/s/ Adam T. Simons

Adam T. Simons